

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 635 OF 1999

Sachin Baburao Powade
326, West Mangalwar Peth,
Solapur

..Petitioner

V/s

1. The Tahsildar And
Executive Magistrate,
North Solapur, Dist. Solapur

2. Committee For Verification
of Tribe Claims, Queens Garden
Pune.

3. Divisional Controller
Maharashtra State Road Transport
Corporation, Solapur Division,
Solapur

4. Maharashtra State Road Transport
Corporation, Solapur Division, Solapur

5. State of Maharashtra
(Through The Secretary
Tribal Development Dept.,
Mantralaya, Bombay)

..Respondents.

Mr. Nitin Jamdar for the petitioner

Mr. C.R. Sonawane, AGP for Respondents 1,2 and 5

Mr. G.S. Hegde for respondents 3 and 4.

**CORAM : B.H. MARLAPALLE &
J.H. BHATIA, JJ.**

DATE : 7TH NOVEMBER, 2006.

ORAL JUDGMENT (PER B.H. MARLAPALLE, J)

. Being aggrieved by the decision of the Committee for verification of Tribe Claims, Pune, rendered on 24/12/1998, thereby rejecting his Tribe claim, the petitioner has filed this petition under Article 226 and 227 of the Constitution of India. He was issued caste certificate by the Executive Magistrate North Solapur, thereby certifying that the petitioner belongs to "Mannervarlu Tribe". On the basis of the said certificate, the petitioner obtained appointment to a post reserved for Scheduled Tribe under Respondent No.3. The said certificate was therefore, referred by respondent No.3 to scrutiny Committee for verification on 7/10/1997, after he had joined as a helper in Mangalwedha Depot, District Solapur on 28/8/1997. By the impugned order the Committee held that the petitioner does not belong to "Mannervarlu,, Scheduled Tribe" and therefore, his Tribe claim is invalid. The Committee further directed to cancel the caste certificate dated 14/8/1992 issued in favour of the petitioner by the Tahsildar and Executive Magistrate, North Solapur.

2. Consequent to the decision rendered by the Scrutiny Committee, the petitioner came to be removed

from service by Respondent No.3 on 1/2/1999 and accordingly, the petition/memo came to be amended by adding two more prayers namely (a) to set aside the order of termination dated 1/2/1999 and, (b) in the alternative the benefits of the Government Resolution dated 15/6/1995 be extended to protect the petitioner's employment under Respondent No.3 on the basis that he belongs to Special Backward Class mentioned in the said Resolution.

3. At the threshold the learned counsel for the petitioner raised the issue of jurisdiction of the Committee, namely when the Respondent No.3 had referred for verification the petitioner's tribe claim to the Committee on 7/10/1997, the said Committee did not have the powers for verification of the caste claims or Tribe claims of the employees of the said Undertaking, like Respondent No.4. i.e. Maharashtra State Road Transport Corporation. However, it is admitted that the Government of Maharashtra issued a G.R. on 11/6/1998 and the Committee was empowered to verify the Tribe Claims of the employees of the State Undertakings. Even otherwise, when the benefit of reservation was sought and in fact was taken for public employment (under a

State undertaking) the action of Respondent No.3 in referring the petitioner's caste claim for verification of the Committee could not be faulted. The employment under the State Government or a State Undertaking against a reservation post can be claimed and continued only when the caste claim is verified and upheld, and if the Committee constituted by the State Government was competent to verify such claims, it cannot be said that in the absence of any specific Notification by the State Government, the acceptance of the request made by Respondent No.3 to verify the petitioner's tribe claim was illegal or was vitiated on that count as on the date the impugned order was passed, the Committee was empowered to adjudicate upon the tribe claim of the petitioner.

4. In support of his tribe claim, the petitioner had submitted the following documents before the Scrutiny Committee, in addition to the caste certificate issued in his favour by the Executive Magistrate, North Solapur on 14/8/1992:-

(a) School Leaving Certificate issued by the Head Master, Shree Sidheshwar Balmandir, Solapur on 9/9/1994,

wherein the petitioner's caste was recorded as "Telgu Munnervarlu".

(b) School Leaving Certificate issued by the Head Master, Siddheshwar High School, Solapur on 12/7/1996 recording the petitioner's caste as "Telgu Munnervarlu".

(c) Registration certificate with Akhil Maharashtra Munnervarlu Sanghatana, Pune stating that the petitioner belongs to "Munnervarlu tribe".

(d) Caste Certificate of petitioner's father Shri Baburao Manikrao Powade issued by Tahsildar and Executive Magistrate, North Solapur, wherein the caste was recorded as "Munnervarlu".

5. In order to verify the correctness of the caste claim, the Scrutiny Committee ordered a School and Home Enquiry and the same was conducted with the help of Police Inspector of Vigilance Cell, who submitted his report on 14/9/1998, pointing out that the petitioner did not belong to "Munnervarlu, Scheduled Tribe". This enquiry report considered the following record:-

(a) Candidate's father Shri Babu Manikrao Powade had studied at Shree Jatkar Marathi Vidyalay and his caste was recorded as "Phulmali". In the said record the petitioner's father's date of birth was recorded as 1948 and the admission to the School was recorded in the year 1954. Thus, the entry of caste "Phulmali" was recorded in the year 1954.

(b) Similarly, the Head Master of Biradar Pirmay Vidhyalaya Shelgi, Solapur also issued caste certificate in favour of Shri Babu Manikrao Powade and at the time of admission in the said School his caste was shown as "Phulmali" in the year 1954.

(c) The petitioner's uncle (father's brother) Shri Chandrakant Manikrao Powade was admitted in Biradar Primary Vidyalay, Shelgi, Solapur in the year 1956 and his caste was recorded as "Phulmali".

(d) The petitioner's other uncle (father's cousin brother) Shri Suryakant Dattatraya Powade was admitted in Shree Siddheshwar Balmandir (Primary Division) and his caste was recorded as "Phulmali".

6. Based on these documents, the Vigilance enquiry report pointed that the petitioner's caste was "Phulmali" and not "Munnervarlu". The Committee therefore, called upon the petitioner for personal hearing and he furnished his explanation in writing on 10/11/1998 along with a letter of Dr. Peri Bhaskarrao Ph.D. and Professor of Phonetics and Head Department of Linguistics Deccan College, Pune, stating that "Munnerwar" is a single word and "Mannervarlu" is a plural word and therefore, Munnerwar and Mannervarlu are one and the same. The Committee noted that Munnerwar, Munnurkapu, Talgu Fulmali are the castes included in the Special Backward Class by the State Government. Whereas, Munnervarlu is not a separate tribe but it is a synonym of Kolam, Scheduled Tribe, was the claim of the petitioner. This plea was turned down by the Committee which proceeded to examine the traits, characteristics and customs of Kolam, Scheduled Tribe. The Committee considered the explanation furnished by the petitioner and noted that there was no similarity of his caste and customs, traits and characteristics of "Kolam, Scheduled Tribe". The Committee therefore, recorded a finding that the petitioner belongs to "Phulmali" caste.

7. We have noticed that all caste certificates which were relied upon by the petitioner and submitted before the Caste Scrutiny Committee as referred to hereinabove were issued after the petitioner obtained his caste certificate on 14/8/1992, except the caste certificate issued in favour of his father on 13/8/1984 and these certificates have been discarded by the Committee on the basis of the School Admission record as collected by the Vigilance Enquiry Cell by visiting the schools concerned. Undoubtedly, the documents considered by the Vigilance Cell would have more probative value than the certificates relied upon by the petitioner. We therefore, do not find any infirmity in the view taken by the Scrutiny Committee in the impugned order and the challenge raised to the said order in this petition must fail.

8. Coming to the alternative prayer for protection on the basis of G.R. dated 15/6/1995, it is to be noted that the said G.R. was applicable to the employees under the State Government who were already in employment when it was issued. The petitioner came to be appointed on 28/8/1997 and in any case, when the tribe claim itself was found to be false, the action of

termination of service by the Respondent No.3 cannot be faulted with. As is the well established position in law that if the entry in public employment was on the basis of a tribes claim, the candidate concerned must vacate the post on his claim having been found to be false by the competent Scrutiny Committee. Therefore, there is no doubt in our mind that the petitioner's prayer for protection on the basis of G.R. dated 15/6/1995 is devoid of merits.

9. In the premises this petition fails and the same is hereby dismissed.

10. Rule discharged.

11. No order as to costs.

(J.H. BHATIA, J.)

(B.H. MARLAPALLE, J.)

